

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

**IN RE: DIGITEK PRODUCT LIABILITY  
LITIGATION**

**MDL NO. 1968**

---

**THIS DOCUMENT RELATES TO ALL CASES**

**DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE  
SUPPORTING THEIR MOTION TO STRIKE PLAINTIFFS' EXHIBIT 620**

Defendant Actavis Totowa LLC respectfully requests that this Court grant them leave to file Supplemental Evidence in Support of Their Motion to Strike Plaintiffs' Exhibit 620. (Doc. 579). Plaintiffs' opposition to Defendants Motion to Strike was due September 26, 2001. Plaintiffs, however, did not file a response. Because significant and highly relevant new evidence which bears directly on Defendants' Motion to Strike has come to light since the Motion was filed, Defendants seek separate leave to file supplemental evidence. A copy of Defendants' Supplemental Evidence is attached as Exhibit A.

Defendants deposed Dr. Bliesner on September 19, 2011 in a Digitek® case pending in Oklahoma state court.<sup>1</sup> As detailed in Exhibit A, Dr. Bliesner's deposition revealed that the Plaintiffs' attorneys drafted the declaration. In addition, Dr. Bliesner admitted during his deposition that many of the departures from his Report made in his declaration – including misleading testimony that out-of-specification Digitek® was released to market – are incorrect, and that he has known of these inaccuracies since shortly after he signed the declaration. Neither Plaintiffs nor Dr. Bliesner have corrected any of these potentially significant errors.

---

<sup>1</sup> *Sam Johnson, as Personal Representative of the Estate of Martha Bea Johnson, deceased v. Actavis Totowa LLC, et al.*, Dist. Ct. of Oklahoma Cty., Case No. CJ-2009-5292 (“Johnson”).

Under the circumstances, this Court should grant Defendants leave to file their Supplemental Evidence Supporting Their Motion to Strike Plaintiffs' Exhibit 620. The Court should consider this important and highly relevant new evidence.

Respectfully submitted,

TUCKER ELLIS & WEST LLP

GUTHRIE & THOMAS, PLLC

Rebecca A. Betts, LIAISON COUNSEL  
500 Lee Street East, Suite 800  
Charleston, West Virginia 25301  
Tel: (304) 345-7250  
Fax: (304) 345-9941  
E-mail: [rabetts@agmtlaw.com](mailto:rabetts@agmtlaw.com)

*Attorney for Defendants*

By: /s/ Richard A. Dean

Richard A. Dean (Ohio Bar #0013165),  
CO-LEAD COUNSEL  
Matthew P. Moriarty (WV Bar # 4571;  
Ohio Bar 0028389), CO-LEAD COUNSEL  
925 Euclid Avenue, Suite 1150  
Cleveland, Ohio 44115-1414  
Tel: (216) 592-5000  
Fax: (216) 592-5009  
E-mail: [richard.dean@tuckerellis.com](mailto:richard.dean@tuckerellis.com)  
[matthew.moriarty@tuckerellis.com](mailto:matthew.moriarty@tuckerellis.com)

*Attorneys for Defendants Actavis Totowa LLC,  
Actavis Inc., and Actavis Elizabeth LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2011, a copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE SUPPORTING THEIR MOTION TO STRIKE PLAINTIFFS' EXHIBIT 620** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

TUCKER ELLIS & WEST LLP

GUTHRIE & THOMAS, PLLC

Rebecca A. Betts, LIAISON COUNSEL  
500 Lee Street East, Suite 800  
Charleston, West Virginia 25301  
Tel: (304) 345-7250  
Fax: (304) 345-9941  
E-mail: [rabetts@agmtlaw.com](mailto:rabetts@agmtlaw.com)

*Attorney for Defendants*

By: /s/ Richard A. Dean

Richard A. Dean (Ohio Bar #0013165),  
CO-LEAD COUNSEL  
Matthew P. Moriarty (WV Bar # 4571;  
Ohio Bar 0028389), CO-LEAD COUNSEL  
925 Euclid Avenue, Suite 1150  
Cleveland, Ohio 44115-1414  
Tel: (216) 592-5000  
Fax: (216) 592-5009  
E-mail: [richard.dean@tuckerellis.com](mailto:richard.dean@tuckerellis.com)  
[matthew.moriarty@tuckerellis.com](mailto:matthew.moriarty@tuckerellis.com)

*Attorneys for Defendants Actavis Totowa LLC,  
Actavis Inc., and Actavis Elizabeth LLC*